

CITY OF TIGARD
96-
ORDINANCE NO. 13

AN ORDINANCE AMENDING CHAPTER 13.09, REIMBURSEMENT DISTRICTS OF THE TIGARD MUNICIPAL CODE.

WHEREAS, the City Council finds that Chapter 13.09 of the Tigard Municipal Code should be updated; now, therefore:

THE CITY OF TIGARD ORDAINS AS FOLLOWS:

Section 1. Section 13.09.010(9) is amended to read as follows:

"Reimbursement Fee" means the fee required to be paid by a resolution of the City Council and the reimbursement agreement.

Section 2. Section 13.09.020, Application for a Reimbursement District is amended to read as follows:

(1) Any person who is required to or chooses to finance some or all of the cost of a street, water or sewer improvement which is available to provide service to property, other than property owned by the person, may, by written application filed with the City Engineer, request that the City establish a reimbursement district. The street, water and sewer improvements must include improvements in addition to or in a size greater than those which would otherwise ordinarily be required in connection with an application for permit approval and must be available to provide service to property other than property owned by the applicant. Examples include but shall not be limited to full street improvements instead of half street improvements, off site sidewalks, connection of street sections for continuity, extension of water lines and extension of sewer lines. The City may also initiate formation of a reimbursement district. The application shall be accompanied by a fee, as established by resolution, sufficient to cover the cost of administrative review and notice pursuant to this Chapter.

(2) The application shall include the following:

(a) A description of the location, type, size and cost of the public improvement to be eligible for reimbursement.

(b) A map showing the properties to be included in the proposed reimbursement district; the zoning district for the properties; the front footage or square footage of said properties, or similar data necessary for calculating the apportionment of the cost; and the property or properties owned by the applicant.

(c) The estimated cost of the improvements as evidenced by bids, projections of the cost of labor and materials, or other evidence satisfactory to the City Engineer.

(d) The estimated date of completion of the public improvements.

(e) Applicant may request a discretionary annual fee adjustment, which, if granted, will be administered pursuant to Section 13.09.115.

Section 3. Section 13.09.030, City Engineer's Report, is amended to read as follows:

The City Engineer shall review the application for the establishment of a reimbursement district and evaluate whether a district should be established. The Engineer may require the submittal of other relevant information from the applicant in order to assist in the evaluation. The Engineer shall prepare a written report for the City Council, considering and making recommendations concerning the following factors:

(a) Whether the applicant will finance some or all of the cost of a street, water or sewer improvement, thereby making service available to property, other than property owned by the applicant;

(b) The area to be included in the reimbursement district;

(c) The estimated cost of the street, water or sewer improvements within the area of the proposed reimbursement district and the portion of the cost for which the applicant should be reimbursed;

(d) A methodology for spreading the cost among the parcels within the reimbursement district and where appropriate defining a "unit" for applying the reimbursement fee to property which may, with City approval, be partitioned, altered, modified, or subdivided at some future date. The methodology should include

consideration of the cost of the improvements, prior contributions by property owners, the value of the unused capacity, rate-making principles employed to finance public improvements, and other factors deemed relevant by the City Engineer. Prior contributions by property owners will only be considered if the contribution was for the same type of improvement and at the same location (example: a sewer-related contribution in the same location as a sewer improvement would be considered, a water-related contribution in the same location as a sewer improvement would not be considered);

(e) The amount to be charged by the City for administration of the agreement by the City. The administration fee shall be fixed by the City Council and will be included in the resolution approving and forming the reimbursement district. The administration fee is due and payable to the City at the time the agreement in Section 13.09.070(2) is signed.

(f) The period of time that the right to reimbursement exists if the period is less than fifteen years.

Section 4. Section 13.09.040, Amount to be Reimbursed, is amended to read as follows:

(1) The cost to be reimbursed to the applicant shall be limited to the cost of construction, engineering, and off-site right of way. Engineering shall include surveying and inspection and shall not exceed 13.5% of eligible construction cost. Costs to be reimbursed for right of way shall be limited to the reasonable market value of land or easements purchased by the applicant from a third party to complete off-site improvements.

(2) No reimbursement shall be allowed for financing costs, permits or fees required for construction permits, land or easements dedicated by the applicant, costs which are eligible for traffic impact fee credits or systems development charge credits, or any costs which cannot be clearly documented.

(3) No reimbursement shall be allowed for construction costs that occur prior to the formation date of the reimbursement district.

(4) Reimbursement for legal expenses shall be allowed only to the extent that such expenses relate to the preparation and filing of an application for reimbursement, and to working with the City through the Engineer's Report and formation public hearing stages of an application.

(5) A reimbursement fee shall be computed by the City for all properties which have the opportunity to utilize the improvements, including the property of the applicant for formation of a reimbursement district. The applicant for formation of the reimbursement district shall not be reimbursed for the portion of the reimbursement fee computed for the property of the applicant.

Section 5. Section 13.09.050(2) is hereby repealed.

Section 6. Section 13.09.070, City Council Action, is amended to read as follows:

(1) After the public hearing held pursuant to Section 13.09.050, the City Council shall approve, reject or modify the recommendations contained in the City Engineer's report. The City Council's decision shall be embodied in a resolution. If a reimbursement district is established, the resolution shall include the City Engineer's report as approved or modified.

(2) When the applicant is other than the City, the resolution shall instruct the City Administrator to enter into an agreement with the applicant pertaining to the reimbursement district improvements. The agreement shall be contingent upon the improvements being accepted by the City. The agreement, at a minimum, shall contain the following provisions:

(a) The public improvement(s) shall meet all applicable City standards.

(b) The estimated total amount of potential reimbursement to the applicant.

(c) The applicant shall defend, indemnify and hold harmless the City from any and all losses, claims, damage, judgments or other costs or expense arising as a result of or related to the City's establishment of the district.

(d) The applicant shall acknowledge that the City is not obligated to collect the reimbursement fee from affected property owners.

(e) Other provisions as the City Council determines necessary and property to carry out the provisions of this Chapter.

(3) If a reimbursement district is established by the City Council, the date of the formation of the district shall be the date that the City Council adopts the resolution forming the district.

(4) The City Council resolution and reimbursement agreement shall determine the boundaries of the reimbursement district and shall determine the methodology for imposing a fee which considers the cost of reimbursing the applicant for financing the construction of a street, water or sewer improvement within the reimbursement district.

Section 7. Section 13.09.105, Final Public Hearing, is added to read as follows:

(1) Within three months after completion and acceptance of the improvements, the applicant shall submit to the City Engineer the actual cost of the improvements as evidenced by receipts, invoices or other similar documents. The City Engineer shall review the actual costs and shall prepare a written report for the City Council recommending revisions to the report prepared under 13.09.030.

(2) The final cost shall not exceed by more than 10% the cost estimated at the time of reimbursement district formation unless an exception is approved by the City Council. An exception may be approved only if the applicant can show legitimate circumstances beyond the control of the applicant which cause the cost increase.

(3) Within a reasonable time after the City Engineer has completed the report required in subsection (1), the City Council shall hold an informational public hearing in which any person shall be given the opportunity to comment on the recommended revisions.

(4) Failure to provide the documentation required by this section shall result in the automatic lapse of any resolution adopted by the City Council pursuant to section 13.09.050. Following the final public hearing provided for herein, and subject to the limitations provided for herein, the

City Council shall have the authority to approve, rescind, or modify the reimbursement district.

Section 8. Section 13.09.110, Obligation to Pay Reimbursement Fee, is amended to read as follows:

(1) The applicant for a permit related to property within any reimbursement district shall pay the City, in addition to any other applicable fees and charges, the reimbursement fee established by the Council, if within the time specified in the resolution establishing the district, the person applies for and receives approval from the City for any of the following activities:

- (a) A building permit for a new building;
- (b) Building permit(s) for any addition(s), modification(s), repair(s) or alteration(s) of a building, which exceed twenty-five percent (25%) of the value of the building within any 12-month period. The value of the building shall be the amount shown on the most current records of the County Department of Assessment and Taxation for the building's real market value. This paragraph shall not apply to repairs made necessary due to damage or destruction by fire or other natural disaster;
- (c) Any alteration, modification or change in the use of real property, which increases the number of parking spaces required under the Tigard Community Development code in effect at the time of permit application;
- (d) Connection to or use of a water improvement, if the reimbursement district is based on the water improvement;
- (e) Connection to or use of a sewer improvement, if the reimbursement district is based on the sewer improvement;
- (f) Connection to or use of a street improvement, if the reimbursement district is based on the street improvement.

(2) The City's determination of who shall pay the reimbursement fee is final. Neither the City nor any officer or employee of the City shall be liable for payment of any reimbursement fee or portion thereof as a result of this determination.

(3) A permit applicant whose property is subject to payment of a reimbursement fee receives a benefit from the construction of street improvements, regardless of whether access is taken or provided directly onto such street at any time. Nothing in this ordinance is intended to modify or limit the authority of the City to provide or require access management.

(4) No person shall be required to pay the reimbursement fee on an application or upon property for which the reimbursement fee has been previously paid, unless such payment was for a different type of improvement. No permit shall be issued for any of the activities listed in subsection 13.09.110(1) unless the reimbursement fee has been paid in full. Where approval is given as specified in subsection 13.09.110(1), but no permit is requested or issued, then the requirement to pay the reimbursement fee lapses if the underlying approval lapses.

(5) The date when the right of reimbursement ends shall not extend beyond fifteen years from the district formation date.

Section 9. Section 13.09.115, Annual Fee Adjustment, is added to read as follows:

The City Council may grant an annual fee adjustment at the time of application for formation of a reimbursement district as provided in this section.

(1) An annual fee adjustment shall be applied to the reimbursement fee beginning on the first anniversary of the date of the reimbursement agreement as a return on the investment for the person or the City. The annual fee adjustment shall be fixed and computed against the reimbursement fee as simple interest and will not compound. The amount of the fee adjustment shall be determined at the time that a district is formed and shall be the same each year.

(2) Each fiscal year, the Finance Director shall recommend to the City Council an interest rate to be used in determining the annual fee adjustment for reimbursement districts. The City Council shall consider the recommendation of the Finance Director and shall

adopt an interest rate to be used in determining the annual fee adjustment. The interest rate adopted by the City Council shall be applied to all reimbursement districts formed during the fiscal year, for which annual fee adjustments are approved.

PASSED: By Unanimous vote of all Council members present after being read by number and title only, this 9th day of April, 1996.

Catherine Wheatley
Catherine Wheatley, City Recorder

APPROVED: This 9th day of April, 1996.

Jim Nicoli
Jim Nicoli, Mayor

Approved as to form:

Paula J. Gung
City Attorney

4/9/96
Date

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